

VIII. REGULATIONS

A. CalCAP Regulations

CURRENT TEXT OF REGULATIONS (December 2013)

Title 4. Business Regulations Division 11. California Pollution Control Financing Authority. Article 7. Capital Access Program for Small Businesses

§ 8070. Definitions.

In addition to the definitions in Section 8020, the following terms shall have the following definitions, unless the context requires otherwise:

(a) "Borrower" means a Qualified Business which obtains a Qualified Loan from a Participating Financial Institution.

(b) "Contribution" means any or all eligible funds deposited to a Loss Reserve Account.

(c) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.

(d) "Fees" or "Fee" and "Premiums" or "Premium" means a non-refundable fees or fee as set forth in Health and Safety Code Section 44559.4(c).

(e) "Financial Institution" means an institution as set forth in Health and Safety Code Section 44559.1(d). Financial Institution also includes microbusiness lenders, as defined in Section 13997.2 of the Government Code that make small business loans and require a minimum of four hours of preloan business technical and/or credit assistance to borrowers and a minimum of two hours of postloan assistance each year, and are subject to an audit requirement by its Federal or State regulated funding source.

(f) "Independent Contributor" means any individual, company, corporation, institution, foundation, utility, government agency or other entity, including any consortium of these persons or entities, whether public or private (but excluding any Borrower), that, pursuant to the provisions of this Article, deposits Contributions to a Loss Reserve Account.

(g) "Individual" means a natural person, together, if applicable, with any of his or her spouse, parents, siblings or children or the parents or spouse of any of them.

(h) "Law" means Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the California Health and Safety Code, as amended from time to time.

(i) "Loss Reserve Account" means an account held by a Program Trustee or by any Participating Financial Institution that is established and maintained by the Authority for the benefit of a Participating Financial Institution for the purposes set forth in Section 8073 and Section 8078.2.

(j) "Matching Contribution" means a contribution to a Loss Reserve Account as set forth in Health and Safety Code Section 44559.4(d).

(k) "Money Market Fund" means an open-ended management investment company regulated under the Investment Company Act of 1940, as amended, which values its securities pursuant to Section 270.2a-7 of Title 17 of the Code of Federal Regulations.

(l) "Participating Financial Institution" means a Financial Institution that has been approved by the Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article and as may be required by any applicable federal law providing matching funding.

(m) "Passive Real Estate Ownership" means ownership of real estate for the purpose of deriving income from speculation, trade or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

For purposes of clause (1) above, the Borrower must be using or planning to use upon acquisition or construction of a building, at least 51 percent of the space in an existing building or at least 67 percent of the space in a newly constructed building. The requirements of clause (1) above will be deemed to be satisfied when a Participating Financial Institution makes a Qualified Loan to an Individual, or to a partnership or trust wholly owned or controlled by one or more Individuals, for the purpose of financing property that will be leased to a Qualified Business that is wholly owned by those same Individuals, and in such case the Qualified Loan will be deemed to be made also to such Qualified Business.

(n) "Primary business location in California" means that a business will be deemed to be located in California if either:

(1) a majority of the employees of the business are located in California; or

(2) the Executive Director determines that the Primary business location is in California by finding that the average of the "Payroll Factor" as defined in Revenue and Taxation Code Section 25132, the "Income Factor" as defined in Revenue and Taxation Code Section 25128, and the "Sales Factor" as defined in Revenue and Taxation Code Section 25134 is greater than 50 percent.

(o) "Primary economic effect in California" means, as applied to a business activity, that either of the following conditions exists:

(1) At least 51 percent of the total revenues of the business activity are generated in California; or

(2) At least 51 percent of the total jobs of the business activity are created or retained in California.

(p) "Program" means the Capital Access Loan Program for Small Businesses established pursuant to the Law.

(q) "Program Trustee" means a bank or trust company, or the State Treasurer, chosen by the Authority from time to time to hold or administer some or all of the Loss Reserve Accounts.

(r) "Qualified Business" and "Small Business Concern" means a business as set forth in Health and Safety Code Section 44559.1 subdivision (i) and (m), that is not dominant in its field of operation, and that together with affiliates, has 500 or fewer employees.

(s) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary economic effect in California. A Qualified Loan may be made in the form of a line of credit, in which case the Participating Financial Institution shall specify the amount of the line of credit to be covered under the Program, which may be equal to the maximum commitment under the line of credit or an amount that is less than the maximum commitment. A Qualified Loan may be made in the form of a TRAC Lease when the Loan Loss Reserve Account is funded from an Independent Contributor. "Qualified Loan" does not include any of the following:

(1) A loan for the construction or purchase of residential housing.

(2) A loan to finance Passive Real Estate Ownership.

(3) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.

(4) A loan, the proceeds of which will be used

(A) to provide any of the following facilities, regardless of the source of funds used for the Authority's matching contribution: massage parlor, hot tub facility, racetrack, facility primarily used for gambling or to facilitate gambling, liquor store, bar, a store or other facility whose principal

business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, shooting range or gallery.

(B) to provide any of the following facilities when the Authority's matching contributions will be paid for with fees from the issuance of tax-exempt bond sales, all items listed in (A) and: a store whose principal business is the sale of alcoholic beverages for consumption off premises, private or commercial golf course, country club, spas that provide massage services, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), suntan facility, airplane, aircraft, skybox (or other private luxury box), health club facility.

(C) in any manner that could cause the interest on any bonds previously issued by the Authority to become subject to federal income tax, as specified in writing to all Participating Financial Institutions by the Executive Director.

(5) any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program.

(6) any loan that exceeds \$5,000,000.

(7) any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower (including all related entities among which a common enterprise exists) to have a total enrolled principal amount in excess of \$2,500,000 at any Participating Financial Institution over a three-year period.

(t) "Severely Affected Community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act, Chapter 12.8 (commencing at Section 7070) of Division 7 of Title 1 of the California Government Code; any area, as designated by the Executive Director, contiguous to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended; and any other comparable economically distressed geographic area so designated by the Executive Director from time to time.

(u) "Small Business Assistance Fund" means a fund of that name created by the Authority.

(v) "Standards" means the criteria to be used by an Independent Contributor in assisting businesses through the Program.

(w) "TRAC Lease" means "Terminal Rental Adjustment Clause" as defined in Section 7701 (h) (3) of Title 26 of the United States Code.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Sections 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7, 44559.9 and 44559.12, Division 27, Health and Safety Code.

§ 8071. Application by Financial Institution.

(a) A Financial Institution seeking to participate in the Program will complete a registration application provided by the Authority.

The application shall include the following information:

(1) name of applicant Financial Institution.

(2) name, address and telephone number of contact person.

(3) combined capital and surplus as of the end of the Financial Institution's most recent fiscal year.

(4) number of lending branches.

(5) certification that the applicant Financial Institution is not subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, which would impair its ability to participate in the Program, and the name of that body.

(6) a full description of the board of directors, including number, race, ethnicity and gender of its members.

(7) the Financial Institution's rating from a nationally recognized credit rating agency which assesses the financial soundness and stability of financial institutions.

(8) the Financial Institution's agreement to follow the Program's procedures as set forth in the Law and this Article.

(9) the Financial Institution's agreement to permit an audit of any of its records relating to enrolled Qualified Loans, during normal business hours on its premises, by the Authority or its agents, and to supply such other information concerning enrolled Qualified Loans as shall be requested by the Executive Director.

(10) acknowledgment by the Financial Institution that the Authority and the State will have no liability to the Participating Financial Institution under the Program except from funds deposited in the Loss Reserve Account for the Participating Financial Institution.

(b) Upon receipt of a completed application, the Executive Director will within 10 days review and determine whether additional information is required, or whether the application is sufficient to permit the applicant to be a Participating Financial Institution. The Executive Director's decision whether an application is sufficient shall be final.

(c) A Participating Financial Institution shall be authorized to request the Authority to establish two or more Loss Reserve Accounts for such institution, so that the institution shall be able to allocate any Qualified Loan enrolled under Section 8072 to whichever Loss Reserve Account it designates.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.

Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8072. Loan Enrollment.

(a) The terms and conditions of Qualified Loans, including interest rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.

(b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan:

(1) by notifying the Authority in writing, within 15 business days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower; and

(2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower, or from an Independent Contributor on behalf of the Borrower and/or the Authority, in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held by either the Participating Financial Institution or the Program Trustee.

(c) The notification to the Authority shall include at least the following information:

(1) Borrower name, D/B/A (if any), and the business address.

(2) Brief description of the Borrower's business and regular activities, either the SIC Code(s) or the NAICS Code(s) applicable to such business, and the amount of its annual revenues.

(3) Whether this business has been open for two years or more, and is owned by one of the following: a woman, minority, or veteran.

(4) Brief summary of the intended use of the proceeds of the Qualified Loan.

(5) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled) and the lender loan number.

- (6) Type of the Qualified Loan (e.g., line of credit, term loan, TRAC Lease).
 - (7) Date of the Qualified Loan.
 - (8) Interest rate applicable to the Qualified Loan.
 - (9) Term or maturity date of the Qualified Loan.
 - (10) Geographic location of the Qualified Business and the location of the facilities being financed if different.
 - (11) Whether the Qualified Business or the location of the facilities being financed is in a Severely Affected Community.
 - (12) Whether the loan is secured.
 - (13) Whether the loan is a refinancing, and if so, whether the prior loan was enrolled under the Program, and whether the amount of the loan was increased as part of the refinancing.
 - (14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial Institution.
 - (15) Whether any portion of the Fees payable by the Borrower or the Contribution was or is to be paid by an Independent Contributor; the identity of such Independent Contributor; and a certification that the Independent Contributor has approved the use of its funds to pay such Fees or Contribution in connection with the Qualified Loan.
 - (16) Number of persons currently employed by the Borrower, and number of jobs expected to be created, retained or affected by the Qualified Loan.
 - (17) Certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
 - (18) Certification that the Qualified Loan is for a business activity that has its Primary economic effect in California.
 - (19) Certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
 - (20) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Fees or the Contribution.
 - (21) Certification that the enrolled amount of the loan does not exceed \$2,500,000.
 - (22) Certification that the Participating Financial Institution has notified the Borrower if the Participating Financial Institution's share of the Fees for the Qualified Loan have been paid by the Borrower.
 - (23) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable federal banking regulations.
- The Participating Financial Institution shall be authorized to base the information requested by subsections (4), (16), (17), (18) and (21) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.
- (24) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has secured or made application for all applicable licenses or permits needed to conduct business.
 - (25) Certification from the Participating Financial Institution that it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program.
- (d) If a Borrower seeking a loan from a Participating Financial Institution has less than a majority of its employees in California, the Participating Financial Institution shall be authorized to submit information to, and seek a determination from, the Executive Director that such Borrower

has its Primary business location in California. Such determination shall be made by the Executive Director within 10 days of receipt of a written request from a Participating Financial Institution containing information about the business activities of the proposed Borrower.

(e) If a Borrower seeking a Qualified Loan from a Participating Financial Institution is an employee, member, director, officer, principle shareholder, or affiliate of the Participating Financial Institution, the terms and the conditions of the Qualified Loan and the internal procedures used to approve the Qualified Loan must comply with the following requirements:

(1) If the Participating Financial Institution is a federal-chartered bank, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 371c, 371c-1, 375a, and 375b of the Title 12 of the United States Code, and Sections 215.4 of Title 12 of the Code of Federal Regulations.

(2) If the Participating Financial Institution is a state-chartered bank, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 3370 et seq. of the Financial Code, and Sections 10.19300 to 10.19302 of Title 10 of the California Code of Regulations.

(3) If the Participating Financial Institution is a federal-chartered savings association, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Section 1468 of Title 12 of the United States Code.

(4) If the Participating Financial Institution is a state-chartered savings association, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Sections 6503 and 6529 of the Financial Code.

(5) If the Participating Financial Institution is a federal-chartered credit union, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1757 and 1761c of Title 12 of the United States Code and Section 701.21(d) of Title 12 of the Code of Federal Regulations.

(6) If the Participating Financial Institution is a state-chartered credit union, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 15050 of the Financial Code.

(7) If the Participating Financial Institution is a not-for-profit certified community development financial institution (CDFI), the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1805.807 of Title 12 of the Code of Federal Regulations.

(8) If the Participating Financial Institution is a lending institution as described in Section 44559.1(d)(2) of the Health and Safety Code, the Qualified Loan must be made in accordance with any applicable federal laws that regulate conflicts of interests and insider transactions and Section 120.140 of Title 13 of the Code of Federal Regulations.

(f) The Participating Financial Institution may pre-qualify with the Authority any qualified loan. Pre-qualifications do not necessarily guarantee that funds will be available at the time of final enrollment, unless the funding source requires it. Pre-qualifications shall be valid for six (6) months.

(g) The Authority shall, upon receipt of documentation and Fees from the Participating Financial Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 15 business days after receipt by the Authority of all documentation and Fees required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final. The Executive Director shall be authorized to review an application for enrollment submitted by a Participating Financial Institution in advance of the making of the loan, and notify the institution whether such loan meets the requirements of the Law and this Article.

(h) Upon enrollment of a Qualified Loan, the Contribution shall be transferred for deposit in the

Loss Reserve Account (1) by the Authority or (2) by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and of the source of funds from which the transfer was made.

(i) If the amount is increased, or previously enrolled CalCAP loans are combined, a new loan enrollment form shall be submitted, and Fees (if applicable) shall be transmitted or deposited pursuant to Section 8072(b)(2) based on the increased amount.

(j) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed ten years.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Sections 44559.2, 44559.4 and 44559.12, Division 27, Health and Safety Code.

§ 8073. Loss Reserve Accounts.

(a) Upon the Executive Director's acceptance of an application under Section 8071, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution for the following purposes:

(1) to receive all Fees deposited by the Participating Financial Institution, Borrowers and/or Independent Contributors;

(2) to receive Matching Contributions deposited by the Authority and/or Independent Contributors; and

(3) to pay claims in accordance with Section 8074.

(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating Financial Institution or by a Program Trustee.

(c) Any Loss Reserve Account held in a Participating Financial Institution shall be an interest-bearing demand account or deposit account at a banking institution, or a Money Market Fund approved by the Executive Director, or a combination thereof, and earning a rate of interest that would be expected of accounts of similar type and size. The Loss Reserve Account shall be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Securities Investor Protection Corporation, as appropriate, to the extent permitted by law. The Authority shall not deposit any Loss Reserve Account with a Participating Financial Institution if:

(1) there are any charges by the Participating Financial Institution for the establishment or maintenance of the Loss Reserve Account at such Financial Institution; or

(2) at the time the Loss Reserve Account is established with the Participating Financial Institution, it has a rating below "75" from IDC Financial Publishing Inc.'s Bank Financial Quarterly, S&L-Savings Bank Financial Quarterly, or Credit Union Financial Profiles; or it has a rating of "C" or below from LACE Financial Corp; or it has a rating below "11" from Highline Inc.'s Bank Quarterly or S&L Quarterly or successor publication approved by the Executive Director.

(d) All moneys in a Loss Reserve Account are property of the Authority (subject to the Participating Financial Institution's right to receive a portion of the remaining balance in the Loss Reserve Account upon its withdrawal from the Program pursuant to Section 8076 and subject to subsection (e) below). Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the loss reserve all interest and income that has been credited to the loss reserve account as set forth in Health and Safety Code Section 44559.3(d). The Executive Director shall be authorized to return to a Participating Financial Institution any fees improperly deposited in a Loss Reserve Account.

(e) Notwithstanding any other provision of this article, the Executive Director shall be authorized, with the approval of the applicable Participating Financial Institution, to assign, transfer, pledge or

create security interests in all or a portion of any Loss Reserve Account to any other entity or entities (including a trustee of a securitization trust or trusts) in connection with the securitization of all or a portion of the Participating Financial Institution's loans enrolled in the Program.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status of accounts, enrolled loans, claims and recoveries upon request.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Sections 44559.3 and 44559.8, Division 27, Health and Safety Code.

§ 8074. Claim for Reimbursement.

(a) A Participating Financial Institution shall notify the Authority within 120 days after it has charged off all or part of a Qualified Loan as a result of a default.

(b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss from the enrolled portion of a Qualified Loan prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 120 days.

(c) The Authority shall pay claims within 30 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the representations and warranties provided by the Participating Financial Institution pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid.

(d) Claim reimbursement shall not exceed the enrolled amount of the qualified loan or loans that form the basis for the claim, except when reasonable out-of-pocket expenses are claimed. In the event only a portion of the loan was enrolled, reimbursement of interest and out-of-pocket expenses will be limited to the ratio of the enrolled portion to the total loan amount.

(e) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:

- (1) Name and number of the Participating Financial Institution.
- (2) Name, address and telephone number of contact person.
- (3) Name of the business receiving the defaulted Qualified Loan.
- (4) Amount and date of the Qualified Loan and the Authority's loan number.
- (5) Date of default.
- (6) Amount of default.

(7) Amount of claim and breakdown of components of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.

(8) Certification that notice was filed with the Authority as required by Section 8074(a) above within 120 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.

(9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.

(10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the

Loss Reserve Account is not sufficient to pay all claims.

(11) Statement whether the Qualified Loan qualifies under Section 8074(g).

(f) Except as provided in Section 8074(g) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.

(g) If a Qualified Loan suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.

(h) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.

Reference: Section 44559.5, Division 27, Health and Safety Code.

§ 8075. Subrogation.

(a) The Authority will be subrogated to the rights of the Participating Financial Institution in collateral, personal guarantees and all other forms of security for the Qualified Loan that have not been realized upon by the Participating Financial Institution, when the participating Financial Institution's loss has been fully covered by payment of a loss claim, or by a combination of payment of a loss claim and recovery from the Borrower, liquidation of collateral, or from other sources.

(b) At the time of subrogating its rights, the Participating Financial Institution shall provide the Authority with all original security agreements, any documents evidencing title to real property, certificates of title, guarantees, and any other documents representing security for the Qualified Loan, duly recorded and perfected, and accompanied by enforceable assignments and conveyances to the Authority, unless such security documents also secure indebtedness to the Participating Financial Institution which was not covered by the Qualified Loan. In such latter case, the Participating Financial Institution shall enter into an intercreditor agreement with the Authority, providing that the Participating Financial Institution shall be entitled to recover under such security documents, to the extent possible, the full amount of its loss on any indebtedness not covered by the Qualified Loan but secured by the same collateral as the Qualified Loan; the balance of any amounts recovered under such security documents shall be deposited in the Loss Reserve Account. The Participating Financial Institution shall provide regular reports, as

requested by the Executive Director, concerning its activities in collecting moneys owed from a defaulted Borrower.

(c) The Executive Director shall be authorized to enter into agreements with any Participating Financial Institution to provide for such institution to act as the Authority's agent to secure recovery under any collateral or security documents to which the Authority has been subrogated.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8076. Termination and Withdrawal from Program.

(a) A Participating Financial Institution shall be authorized to withdraw from the Program after giving written notice to the Authority. Such notice shall specify either:

(1) that the Participating Financial Institution waives any further interest in the Loss Reserve Account (including for the reason that all Qualified Loans covered by the Loss Reserve Account have been repaid); or

(2) that the Participating Financial Institution will not enroll any further loans under the Program but that the Loss Reserve Account shall continue in existence to secure all Qualified Loans enrolled prior to such notice.

(b) After receipt of a notice under subsection (a)(1) or receipt of a certificate from a Participating Financial Institution which has withdrawn from the Program pursuant to subsection (a)(2), certifying that all Qualified Loans secured by the Loss Reserve Account have been repaid and that there are no pending claims for reimbursement under Section 8074, the remaining balance in the Loss Reserve Account shall be distributed to the Authority; provided that with respect to moneys deposited in the Loss Reserve Account after January 1, 1999 (and assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date), such moneys shall be distributed to the Authority and to the Participating Financial Institution in the amount of the Authority Share and the Participating Financial Institution Share, respectively. For purposes of this Section 8076, "Authority Share" means the ratio of the contributions made by the Authority (or any Independent Contributor on behalf of the Authority) to the Loss Reserve Account in question from January 1, 1999 to the date of calculation, to the total amount of contributions made to such Loss Reserve Account during that period, and "Participating Financial Institution Share" means 100 minus the Authority Share.

(c) The Executive Director shall be authorized to terminate participation of a Participating Financial Institution in the Program, by notice in writing, upon the occurrence of any of the following:

(1) entry of a cease and desist order, regulatory sanction, or any other action against the Participating Financial Institution by a regulatory agency that may impair its ability to participate in the Program;

(2) failure of the Participating Financial Institution to abide by the Law or this Article; or

(3) failure of the Participating Financial Institution to enroll any Qualified Loans under the Program for a period of one year.

(4) Provision of false or misleading information regarding the Participating Financial Institution to the authority, or failure to provide the authority with notice of material changes in submitted information regarding the Participating Financial Institution.

In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans, but all previously enrolled Qualified Loans shall continue to be covered by the Loss Reserve Account until they are paid, claims are filed, or the Participating Financial Institution withdraws from the Program pursuant to Section 8076(a)(1).

(d) If for a consecutive 12-month period the amount in the Loss Reserve Account continuously

exceeds the outstanding balance of all the Participating Financial Institution's Qualified Loans made since the beginning of the Program, the Executive Director shall be authorized to withdraw any such excess to bring the Loss Reserve Account down to an amount equal to 100 percent of the outstanding balance, in the following manner: (i) first, distributions shall be made to the Authority up to an amount allocable to the moneys on deposit in the Loss Reserve Account on January 1, 1999 (assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date) and (ii) further distributions shall be made to the Authority and to the Participating Financial Institution based on the Authority Share and the Participating Financial Institution Share, respectively.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8077. Reports of Regulatory Agencies.

The Executive Director shall be authorized to seek information directly from any federal or state regulatory agency concerning any Participating Financial Institution participating in the Program.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8078. Participation in the Program by Certain Public or Private Entities.

(a) The Authority shall be authorized to permit any individual, company, corporation, institution, utility, government agency or other entity, including any consortium of these persons or entities, to become an Independent Contributor after such person or entity

(1) submits to the Authority its Standards; provided that the Authority shall not enforce compliance by the Independent Contributor with its Standards;

(2) represents to the Authority that it will not enter into an exclusive arrangement with a particular Participating Financial Institution, but that it is prepared to work with any Participating Financial Institution under the Program;

(3) agrees to indemnify the Authority against any loss, liability or claim arising from the use of the Independent Contributor's funds in the Program;

(4) represents to the Authority that it understands and intends to abide by the provisions of the Law and this Article with regard to its participation in the Program; and

(5) deposits with the Program Trustee an initial amount of at least \$15,000 to be used to pay Fees payable by Borrowers and/or Contributions in connection with Qualified Loans, or receives a written waiver from the Executive Director of this requirement.

(6) agrees to reimburse the Authority for any reasonable costs related to the Independent Contributor's participation in the program, unless waived by the Authority.

(b) An Independent Contributor shall advise the Authority at any time the Standards provided to the Authority pursuant to Section 8078(a)(1) above are changed.

(c) The Authority shall be authorized to terminate an Independent Contributor's participation in the Program at any time, upon written notice, for any cause, including, but not limited to, failure to maintain a minimum deposit of at least \$5,000 with the Program Trustee. An Independent Contributor shall be authorized to terminate its participation in the Program at any time, upon written notice.

(d) An Independent Contributor must pay all fees of the Program Trustee attributable to the funds that the Independent Contributor deposits with the Program Trustee.

(e) Fees and Contributions paid by Independent Contributors shall not be subject to the

maximums set forth in Health and Safety Code Section 44559.4(c).

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Sections 44525, 44526, 44559.3 and 44559.9, Division 27, Health and Safety Code.

§ 8078.1. Preferred Lenders.

(a) Where an Independent Contributor elects to pay the matching contribution and the borrower's fee or the matching contribution and all fees and funds are available, designated Participating Financial Institutions can participate as preferred lenders and process, close, service, and liquidate California Capital Access Program guaranteed loans with reduced requirements for documentation to and prior approval by the Authority.

(b) Before it can operate as a preferred lender, the Participating Financial Institution must:

(1) Submit for review and approval by the Authority a preferred lender supplemental lender enrollment agreement, which will specify a term not to exceed two years. The application shall include the following information:

(A) name of applicant Financial Institution.

(B) name, address and telephone number of contact person.

(C) combined capital and surplus as of the end of the Financial Institution's most recent fiscal year.

(D) number of lending branches.

(E) certification that the applicant Financial Institution is not subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, which would impair its ability to participate in the Program, and the name of that body.

(F) a full description of the board of directors, including number, race, ethnicity and gender of its members.

(G) the Financial Institution's rating from a nationally recognized credit rating agency which assesses the financial soundness and stability of financial institutions.

(H) the Financial Institution's agreement to follow the Program's procedures as set forth in the Law and this Article.

(I) the Financial Institution's agreement to permit an audit of any of its records relating to enrolled Qualified Loans, during normal business hours on its premises, by the Authority or its agents, and to supply such other information concerning enrolled Qualified Loans as shall be requested by the Executive Director.

(J) acknowledgment by the Financial Institution that the Authority and the State will have no liability to the Participating Financial Institution under the Program except from funds deposited in the Loss Reserve Account for the Participating Financial Institution.

(2) Demonstrate a satisfactory performance history with the California Capital Access Program.

(3) Provide the Authority with a plan which clearly outlines how the Participating Financial Institution will train individuals authorized to submit loans for enrollment in the Program.

(c) Upon receipt of a completed application, the Executive Director will within 10 days review and determine whether additional information is required, or whether the application is sufficient to permit the applicant Financial Institution to participate. The Executive Director's decision whether an application is sufficient shall be final.

(d) When the supplemental lender enrollment agreement expires, the Authority may recertify a Participating Financial Institution for an additional term not to exceed two years. Prior to recertification, the Authority will review a Participating Financial Institution's loans, policies and procedures.

(e) Except as specified in this paragraph and paragraph (f), section 8072 shall not apply to the

enrollment of a Qualified Loan by a preferred lender. A Participating Financial Institution is required to notify the Authority within ten (10) business days of its approval of a preferred lender's loan by submitting to the Authority loan appropriate documentation, as set forth in California Code of Regulations Title 4, Division 11, Section 8072(a), (b)(1), (c), (d), (e), (g), (h), and (i) signed by the Participating Financial Institution authorized representatives. Upon receipt of the appropriate documentation for a Qualified Loan by the Authority and Trustee, the Matching Contribution shall be transferred for deposit in the Loss Reserve Account by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and the source of funds from which the transfer was made.

(f) The Authority shall, upon receipt of documentation from the Participating Financial Institution, verify the enrollment of and provide a California Capital Access Program loan number for the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 10 business days after receipt by the Authority of all documentation required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final.

(g) If the Executive Director determines that the Qualified Loan does not meet the requirements of the Law and this Article the Authority will notify the Participating Financial Institution detailing the issue and requesting reimbursement of the contribution related to the Qualified Loan.

(h) The Participating Financial Institution is responsible for all loan decisions regarding creditworthiness. The Participating Financial Institution is also responsible for confirming that all loan closing decisions are correct, and that it has complied with all requirements of the Law and Program regulations.

(i) The Authority may review the performance of a Participating Financial Institution with respect to its preferred lender status.

(j) The Authority may suspend or revoke a preferred lender status upon written notice to the Participating Financial Institution providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation include lender violations of applicable statutes, regulations or Authority policies and procedures.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Sections 44559, 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7 and 44559.9, Division 27, Health and Safety Code.

§ 8078.2. Federal Capital Access Program and Funding.

(a) Where the Contribution comes from funds provided under the State Small Business Credit Initiative enacted pursuant to the Small Business Jobs Act (H.R. 5297, Public Law No. 111-240) the following shall apply, notwithstanding any other provision of this article, to the extent allowed by the Small Business Jobs Act (H.R. 5297, Public Law No. 111-240) (Small Business Jobs Act):

(b) "Participating Financial Institution" also includes all those listed in Health and Safety Code Section 44559.1(d) and all certified community development financial institutions whether or not organized for profit.

(c) The Participating Financial Institution must obtain written assurance from the Borrower that:

- (1) the loan will be used for a business purpose;
- (2) the loan will not be used to repay delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
- (3) the loan will not be used to repay taxes held in trust or escrow;
- (4) the loan will not be used to reimburse funds owed to any owner, including any equity

injection or injection of capital for the business' continuance;

(5) the loan will not be used to purchase any portion of the ownership interest of any owner of the business;

(6) the loan will not be used for business purposes prohibited by the U.S. Treasury;

(7) the loan will not be used to finance ineligible businesses;

(8) no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act 42 U.S.C. §16911); and

(9) the Borrower is not:

(A) an executive officer, director, or principal shareholder of the Participating Financial Institution;

(B) a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Financial Institution; or

(C) a related interest of such executive officer, director, principal shareholder, or member of the immediate family of the Participating Financial Institution.

(d) Ineligible businesses include, but are not limited to, the following business types:

(1) a business engaged in speculative activities that develop profits from fluctuations in price rather than through the normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of legitimate risk management strategies to guard against price fluctuations related to the regular activities of the business;

(2) a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution;

(3) a business engaged in pyramid sales plans, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

(4) a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution; or

(5) a business engaged in gambling enterprises, unless the business earns less than one-third of its annual net revenue from lottery sales.

(6) other businesses that may be restricted by federal fund law or the Department of Treasury.

(e) The Participating Financial Institution must provide written assurance affirming the following:

(1) the Qualified Loan has not been made in order to place under the protection of the CalCAP prior debt that is not covered under CalCAP and that is or was owed by the Borrower to the Participating Financial Institution or to an affiliate of the Participating Financial Institution;

(2) the Qualified Loan is not a refinancing of a loan previously made to the borrower by the Participating Financial Institution or an affiliate of the Participating Financial Institution;

(3) no principal of the Participating Financial Institution has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. §16911));

(4) the Participating Financial Institution will make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right of Financial Privacy Act (12 U.S.C. §3401 et seq.) as applicable; and

(5) the Participating Financial Institution is in compliance with the requirements of 31 C.F.R. §103.121.

(f) Federal capital access funds shall not be used for the following:

(1) activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995. P.L. 104-65, as amended;

(2) financing a non-business purpose;

(3) covering the unguaranteed portions of an SBA loan unless CalCAP receives prior written consent of the U.S. Treasury;

(4) supporting existing extension of credit, including but not limited to prior loans, lines of credit or other borrowings that were previously made available as part of a state small business credit enhancement program.

(g) The federal Matching Contribution shall be equal to the sum of the Fees paid by the Borrower and Participating Financial Institution, unless another amount is allowed by the Small Business Jobs Act.

(h) No more than \$5,000,000 shall be borrowed by any one Borrower using the State Small Business Credit Initiative funds, unless another amount is allowed by the Small Business Jobs Act.

(i) Any Borrower or Participating Financial Institution fees assessed by the Authority as allowed by the Small Business Job Act may be deposited in a Loss Reserve Account.

(j) Claims for reimbursement may be processed according to the requirements of the Small Business Jobs Act.

Note: Authority cited: Sections 44520 and 44559.5(f), Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.11, Health and Safety Code.

B. California Health & Safety Code

Division 27. California Pollution Control Financing Authority Act. Article 2. Organization of Authority

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans and grants authorized under subdivision (g) of Section 44526 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5.

Division 27. California Pollution Control Financing Authority Act. Article 8. Capital Access Loan Program for Small Businesses

44559. (a) The Legislature finds and declares that small businesses are responsible for a significant amount of environmental emissions in the state, but are less able than larger businesses to afford the investment in new equipment or process modifications needed to comply with environmental regulations, with regard to controlling emissions, preventing the creation of pollutants, contaminants, or waste products, and remediating contamination of properties with a reasonable potential for economically beneficial reuse. Additionally, small businesses faced with financial pressures will be likely to reduce expenditures to achieve environmental compliance. Better access to capital will allow small businesses to more easily comply with environmental mandates, and to remediate contamination of properties with a reasonable potential of economically beneficial reuse, and to succeed economically, generating additional revenue to state and local governments that can be used for environmental improvements, all to the benefit of all the residents of the state.

(b) The Legislature also finds and declares that it is in the best interest of the state to expand the Capital Access Loan Program for small business regardless of whether the operations of the small business affect the environment, and to permit business loans to be included in the program for small businesses whose operations do not, necessarily, affect the environment. Small businesses have difficulty gaining access to capital for startup and expansion purposes. Small businesses owned by minorities and women have special capital access difficulties. In addition, small businesses operating in areas affected by military base closures are disadvantaged by limited access to capital. The Legislature finds that improving access to capital for these small businesses will spur investment, create jobs, expand economic opportunities, assist in the recovery of communities affected by defense and aerospace losses, assist in the recovery of neighborhoods and communities affected by contaminated properties that are not being used for economically beneficial purposes but which could be so used if the contamination was remediated, and help sustain and strengthen economic recovery in California.

44559.1. As used in this article, unless the context requires otherwise, all of the following terms have the following meanings:

- (a) "Authority" means the California Pollution Control Financing Authority.
- (b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.
- (c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.
- (d) (1) "Financial institution" means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.
- (2)(A) "Financial institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations, and a small business financial development corporation, as defined in Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or microbusiness lender, as defined in Section 13997.2 of the Government Code, that meets standards that shall be established by the authority. For loans where all or part of the fees and matching contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, "financial institution" also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.
- (B) A financial institution described in paragraph (2) shall be domiciled or have its principal office in the State of California.
- (3) "Financial institution" also includes an insured depository institution, as these terms are defined in Section 4702 of Title 12 of the United States Code.
- (e) "Loss reserve account" means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) "Participating financial institution" means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) "Passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) "Program" means the Capital Access Loan Program created pursuant to this article.

(i) "Qualified business" means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) "Qualified loan" means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) "Qualified loan" does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) "Severely affected community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) "Small Business Assistance Fund" means a fund created within the authority pursuant to Section 44548.

(m) "Small business concern" has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

44559.2. (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the Capital Access Loan Program established by this article.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete North American Industry Classification System (NAICS) for the qualified business, the number of jobs created, the number of jobs retained, and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) Other terms that the authority may require for purposes of this article.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code) may participate in the Capital Access Loan Program established pursuant to this article only to the extent participation is in compliance with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Financial Institutions to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

44559.3. (a) The authority shall establish a loss reserve account for each financial institution with which the authority makes a contract.

(b) The loss reserve account for a financial institution shall consist of moneys paid as fees by borrowers and the financial institution, moneys transferred to the account from a small business assistance fund, any matching federal moneys, and any other moneys provided by the authority or other source.

(c) Notwithstanding any other provision of law, the authority may establish and maintain loss reserve accounts with any financial institution under such policies as the authority may adopt.

(d) All moneys in a loss reserve account established pursuant to this article are the exclusive property of, and solely controlled by, the authority. Interest or income earned on moneys credited to the loss reserve account shall be deemed to be part of the loss reserve account. The authority may withdraw from the loss reserve account all interest or other income that has been credited to the loss reserve account. Any withdrawal made pursuant to this subdivision may be made prior to paying any claim and shall be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs and loss reserve account contributions.

(e) The combined amount to be deposited by the participating financial institution into any individual loss reserve account over a three-year period, in connection with any single borrower or any group of borrowers among which a common enterprise exists, shall be not more than one hundred thousand dollars (\$100,000).

44559.4. (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 15 days after the date on which the loan is made, of all of the following:

- (1) The disbursement of the loan.
- (2) The dollar amount of the loan enrolled.
- (3) The interest rate applicable to, and the term of, the loan.
- (4) The amount of the agreed upon premium.

(b) The executive director may authorize an additional five days for a financial institution to submit the written notification described in subdivision (a) to the authority on a loan-by-loan basis for a reason limited to conditions beyond the reasonable control of the financial institution.

(c) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (g) of Section 44559.1.

(d) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 1 percent of the principal amount of the loan, but not more than 3 1/2 percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

(e) When depositing fees collected under subdivision (d) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount not less than 150 percent of the amount of the fees paid by the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, the total amount deposited into the loss reserve account shall not be less than the amount which would have been deposited in the absence of matching funds.

(f) This section shall remain in effect only until April 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before April 1, 2017, deletes or extends that date.

44559.4. (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 15 days after the date on which the loan is made, of all of the following:

- (1) The disbursement of the loan.
- (2) The dollar amount of the loan enrolled.
- (3) The interest rate applicable to, and the term of, the loan.
- (4) The amount of the agreed upon premium.

(b) The executive director may authorize an additional five days for a financial institution to submit the written notification described in subdivision (a) to the authority on a loan-by-loan basis for a reason limited to conditions beyond the reasonable control of the financial institution.

(c) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (g) of Section 44559.1.

(d) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 2 percent of the principal amount of the loan, but not more than 3 1/2 percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

(e) When depositing fees collected under subdivision (d) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount not less than 150 percent of the amount of the fees paid by the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, the total amount deposited into the loss reserve account shall not be less than the amount which would have been deposited in the absence of matching funds.

(f) This section shall become operative on April 1, 2017.

44559.5. (a) The authority shall establish procedures under which financial institutions participating in the program established pursuant to this article may submit claims for reimbursement for losses incurred as a result of qualified loan defaults. A participating financial institution that charges off all or part of an enrolled loan to the loss reserve account may file a claim for reimbursement with the authority if both of the following conditions are met:

(1) The claim occurs contemporaneously with the action of the participating financial institution to charge off all or part of the loan.

(2) The charge off on an enrolled loan is made in a manner that is consistent with the participating financial institution's usual method for making determinations on business loans that are not enrolled loans.

(b) Costs for which a financial institution may be reimbursed from its loss reserve account include the amount of loan principal charged off, accrued interest on the principal, reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral, and any other related costs. Proper documentation of the expenses shall be presented at the time of the claim.

(c) If a participating financial institution files two or more claims contemporaneously, and there are insufficient funds in the reserve fund at that time to cover the entire amount of such claims, the institution may designate the order of priority in which the claims shall be paid.

(d) A financial institution may seek reimbursement of loan losses prior to the liquidation of collateral from defaulted loans. The financial institution shall repay its loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the borrower or from the liquidation of collateral for the defaulted loan, less any reasonable out-of-pocket expenses incurred in collection of such amount.

(e) In any case in which the payment of a claim under this section has fully covered a participating financial institution's loss on an enrolled loan, the participating financial institution shall assign to the authority, and to any applicable federal agency in the event federal matching funds are involved, any right, title, or interest to any collateral, security, or other right of recovery in connection with a loan made under the program.

(f) The executive director may adopt necessary rules for the authority to carry out its duties, functions, and powers relating to the program established pursuant to this article.

44559.6. The authority shall annually prepare a report to the Governor and the Legislature that describes the financial condition and programmatic results of the capital access loan program for small businesses authorized under this article. Programmatic results shall include, but not be limited to, the total number of businesses served, jobs created, jobs retained, the geographic distribution of the loans, and the breakdown of businesses served by industry sector for all new loans issued since the report for the prior year.

44559.7. The authority may enter into agreements with commercial banks or other financial institutions, or with other agencies of the state, to provide necessary assistance in carrying out the program authorized by this article, including origination and servicing of loans.

44559.8. Notwithstanding this article, the authority may facilitate the development of a secondary market for a loan enrolled in the capital access loan program by providing security for that loan, thereby increasing participation in the program by financial institutions and improving access to capital for small businesses. For purposes of this section, the actions that the authority may take include, but are not necessarily limited to, assigning all, or a portion of, any loss reserve account to any other entity in connection with providing security for a loan, including a trustee of a securitization trust, transferring an enrolled loan from a participating financial institution to a securitization trust, and assisting underwriters in marketing a loan to the secondary market.

44559.9. The authority shall expand the Capital Access Loan Program established by this article to include outreach to financial institutions that service agricultural interests in the state for the purpose of funding air pollution control measures.

44559.11. (a) It is the intent of the Legislature to ensure that the state, through the authority, may make maximum, efficient use of capital access programs enacted by all federal and state agencies, as well as funding available from any governmental program whose goals may be advanced by providing funding to the Capital Access Loan Program.

(b) In furtherance of this intent, and notwithstanding any other provision of this article, when the contributions required pursuant to Section 44559.4 are entirely funded by a source other than the authority, the authority may, by regulation adopted pursuant to subdivision (b) of Section 44520, establish alternate provisions as necessary to enable the authority to participate in the alternative funding source program.

44559.12. (a) Consistent with subdivision (b) of Section 44559.11, the authority may establish loss reserve accounts for the purposes of financing terminal rental adjustment clause leasing, if funds are available for contribution into the loss reserve account from any source other than the authority. The authority shall not contribute any funds into a loss reserve account created pursuant to this section. Funds provided by the federal government for the purposes of providing a loan loss reserve program shall not be contributed to an account created pursuant to this section.

(b) The executive director may establish conditions for terminal rental adjustment clause leasing loss reserve accounts created pursuant to this section.

(c) As used in this section, "terminal rental adjustment clause" means "terminal rental adjustment clause" as defined in Section 7701 (h)(3) of Title 26 of the United States Code.